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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/895,578	06/29/2001	Robert J. Royer JR.	ITL.1276US (P11447)	6935
21906	7590	02/06/2006	EXAMINER	
TROP PRUNER & HU, PC 8554 KATY FREEWAY SUITE 100 HOUSTON, TX 77024			PORTKA, GARY J	
			ART UNIT	PAPER NUMBER
			2188	

DATE MAILED: 02/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/895,578

Applicant(s)

ROYER ET AL

Examiner

Gary J. Portka

Art Unit

2188

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 and 22-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 and 22-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. Claims 1-17 and 22-30 are pending.

#### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

#### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-5, 7-9, 12-15, 17, and 22-29 are rejected under 35 U.S.C. 102(e) as anticipated by March et al., US 6,647,471 (hereinafter "March").

5. As to claims 1, 7, 13, 22, and 27, March discloses a *method, non-volatile memory, system, and program comprising partitioning a non-volatile storage media, storing data in a first section and metadata corresponding to the data in a second section* (see Abstract, Figs. 1, 3, 7, and 8, col. 1 lines 15-30, and col. 9 lines 30-59,

Art Unit: 2188

where the file data is considered stored in the first partitioned section, and the associated file structures therefor considered metadata stored in the second partitioned section), and *accessing the second partitioned section upon/on/during/in a system boot* (see col. 9 lines 41-47, where a boot block file structure by definition is accessed during system boot). The processor is at data storage system 10, the hub is the controlling circuitry of 20/70/200.

6. Claims 1-5, 7-9, 12-15, 17, and 22-29 are rejected under 35 U.S.C. 102(b) as anticipated by Raju et al., US 6,078,999 (hereinafter "Raju").

7. As to claims 1, 7, 13, 22, and 27, Raju discloses a *method, non-volatile memory, system, and program comprising partitioning a non-volatile storage media, storing data in a first section and metadata corresponding to the data in a second section* (see Abstract, Figs. 2, 8, and 9, col. 3 lines 1-22 and 40-55, col. 6 line 62 to col. 7 line 3, col. 7 lines 18-24, and col. 8 line 49 to col. 9 line 12, where the shadow copies of the streams that are flushed to disk are considered making up the first partitioned section, and the transaction table flushed to disk is considered the metadata making up the second partitioned section), and *accessing the second partitioned section upon/on/during/in a system boot* (see col. 7 lines 1-3, and col. 9 lines 8-12, where it is clarified that the first embodiment accesses the transaction tables in secondary storage during boot time). The processor is at data storage system 10, the hub is the controlling circuitry of 56.

8. As to claims 2-5, 8-9, 12, 14-15, and 17, 23-26, and 28-29, all limitations are considered disclosed in or inherent to the sections of Raju and March cited hereinabove.

9. Claims 6, 10-11, 16, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Raju, in view of Forehand et al., U.S. Patent 6,516,426 B1.

10. As to claims 6, 10-11, 16 and 30, Raju does not disclose the non-volatile cache as part of a mass storage device. However, it was known in the art to implement a part of a mass storage device as a non-volatile cache. Forehand teaches that storing data in a non-volatile manner is required to avoid loss of data (see col. 1 lines 43-49), and that the expense and control issues of other non-volatile caching techniques are solved by an on-disk caching technique (see col. 2 lines 4-34). Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to have the non-volatile cache as part of a mass storage device, because this was previously known as a less expensive and easier controlled method of avoiding the loss of data.

### ***Response to Arguments***

11. Applicant's arguments filed December 1, 2005 have been fully considered but are not persuasive. Applicant has essentially argued that none of the references teach partition sections or metadata. The argument appears to be based upon assumed definitions of these terms that are not required by the disclosure, which has not defined these terms with any specificity. A "partitioned section" is interpreted as any area divided from other areas. Page 6 of the specification states that the partitioning may be logical. From this it can be interpreted as any logically identified area, such as a file

identified by a file name. The file is not even required to be physically contiguous. However, March even shows the file areas as physically contiguous (Figs. 7 and 8), and thus clearly a partitioned section to the extent claimed. "Metatdata" is interpreted as data about other data (literally, data at a later stage of development than the original data). In each reference used, the data interpreted as the recited metadata is data about the other data in the reference (file structure data is data about file data (March), and the transaction table data is about the data of the streams (Raju)). The rejection over Kumar has been withdrawn because it cannot be fairly said to teach that the configuration data is metadata about the bootstrap code.

### ***Conclusion***

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary J. Portka whose telephone number is (571) 272-4211. The examiner can normally be reached on M-F 9:30 AM - 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mano Padmanabhan can be reached on (571) 272-4210. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gary J Portka  
Primary Examiner  
Art Unit 2188

January 31, 2006



**GARY PORTKA  
PRIMARY EXAMINER**